

## Calendar No. 527

110TH CONGRESS } 1st Session }	SENATE	{ REPORT 110-239
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### PUBLIC CORRUPTION PROSECUTION IMPROVEMENTS ACT OF 2007

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DECEMBER 10, 2007.—Ordered to be printed

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Mr. LEAHY, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

[To accompany S. 1946]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1946) to help federal prosecutors and investigators combat public corruption by strengthening and clarifying the law, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

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#### I. BACKGROUND AND PURPOSE OF THE PUBLIC CORRUPTION PROSECUTION IMPROVEMENTS ACT OF 2007

##### A. BACKGROUND

Earlier this year, Congress took an important first step in restoring Americans' faith in their elected officials by passing long-awaited ethics and lobbying reforms that tighten restrictions on those who hold public office, as well as those who seek to lobby officeholders on behalf of private industry. See *Honest Leadership* and

Open Government Act of 2007, Public Law No. 110–81, 121 Stat. 735. This positive legislation will enhance transparency and ethical accountability for Members of Congress and outside interests. But stamping out official corruption in all branches and at all levels of government requires Congress to do more than change its own rules. It requires Congress to move forward in a bi-partisan fashion to give law enforcement the resources it needs to effectively investigate and prosecute public corruption crimes, and to clarify and strengthen existing laws so that corrupt conduct can be detected and punished.

Public corruption undermines democracy and good governance by subverting established processes and reducing accountability. It also creates negative economic effects by distorting the playing field for government contracts, reducing the need for compliance with rules and regulations, and diminishing the quality of government services. District of Columbia residents are confronting these negative effects following the recent arrests of several Department of Tax and Revenue employees who allegedly bilked District taxpayers out of more than \$40 million in a multi-year fraud scheme. See Carol D. Leonnig & Dan Keating, D.C. Tax Scandal At \$44.3 Million, *Analysis Finds*, Wash. Post, Dec. 2, 2007, at A1. This disturbing episode is a reminder that absent appropriate checks and enforcement, even middle-level government employees can massively corrupt core government functions, undetected, for years.

While this degree of brazen corrupt conduct may not always result in tangible harm to a specific victim, it does result in a serious societal harm. Public corruption victimizes all Americans by quietly chipping away at the foundations of our democracy. Americans' faith in their elected leaders and their Government has been tested in recent years as several high-ranking public officials have pleaded guilty or been convicted of serious and corrosive public corruption offenses. The stain of corruption has spread to all levels of Government and affected both major political parties.

The American people have taken notice. Exit polls following the 2006 mid-term elections revealed that 42 percent of voters identified "corruption and ethics" as "extremely important to their vote," trumping terrorism, the economy and Iraq. Corruption Named as Key Issue by Voters in Exit Polls, CNN, Nov. 8, 2006, <http://www.cnn.com/2006/POLITICS/11/07/election.exitpolls/>. They rightly expect Congress to do all it can to not only police itself, but also to insure that corruption is stamped out at all levels of government.

#### B. NEED FOR THE LEGISLATION

Notwithstanding several recent prosecutions of high-profile public officials, public corruption enforcement generally has waned since 9/11, because scarce FBI resources have been shifted away from the pursuit of white collar crime to counterterrorism. See, e.g., Paul Shukovsky & Daniel Lathrop, FBI Faces Deep Cuts in Programs to Fight Crimes, *Seattle Post-Intelligencer*, Sept. 28, 2007, at A1. A September 2005 report by Department of Justice Inspector General Glenn Fine found that, from 2000 to 2004, there was an overall reduction in public corruption matters handled by the FBI. See Office of the Inspector Gen., U.S. Dep't of Justice, *The External Effects of the Federal Bureau of Investigation's Reprioritization Ef-*

forts 94 (2005), <http://www.usdoj.gov/oig/reports/FBI/a0537/final.pdf>. More recently, a study by the nonpartisan research group Transactional Records Access Clearinghouse (TRAC) found that the prosecution of all kinds of white collar crimes is down 27 percent since 2000, and official corruption cases have dropped in the same period by 14 percent. See Federal Enforcement Data Show Major Changes in How The Bush Administration Has Enforced the Law, TRAC Reports, Oct. 15, 2007, <http://trac.syr.edu/tracreports/crim/184/>.

Man-power and funding shortages have contributed to these declines, and this trend has real-world consequences: the Wall Street Journal reported recently that the investigation of a federal elected official stalled for six months because the investigating U.S. Attorney's Office could not afford to replace the prosecutor who was handling the case. Scot J. Paltrow, *Justice Delayed: Budget Crunch Hits U.S. Attorneys' Offices; Amid Antiterror Focus, Prosecutions Decline*, Wall St. J., Aug. 31, 2007, at A1 (quoting a former Assistant United States Attorney that "many offices have chosen not to take on some difficult cases because they lack the prosecutors and other resources to pursue them").<sup>1</sup>

Funding shortfalls in this area of criminal enforcement should be of particular concern to lawmakers. Public corruption cases are time and resource intensive, because they often involve complex schemes hatched by sophisticated criminals who know how to cover their tracks. Their investigation and prosecution frequently requires teams of federal agents, multiple prosecutors, financial analysts, and paralegals, among other specialists. They often include the use of time-consuming investigative techniques such as forensic analysis as well as the execution of search warrants and wiretaps. Efforts to fully fund anti-corruption units to ensure that investigators and prosecutors have enough time to put cases together are imperative because without adequate time and resources, these cases simply will not be brought.

Even absent the diversion of resources since 9/11, public corruption enforcement must be a national law enforcement priority for this Congress, because corrupt public officials can compromise our national security in alarming ways. Indeed, the FBI's own web site notes that "public corruption can have a direct impact on national security," and it is not difficult to understand this relationship. *Cracking Down on Public Corruption: Why We Take It So Seriously and Why It Matters to You*, FBI, June 20, 2005, <http://www.fbi.gov/page2/june05/obrien062005.htm>. A bribed customs official who allows a terrorist to smuggle a dirty bomb into the country could cause grave harm to our national security, as could a corrupt consular officer who illegally supplies U.S. entry visas to would-be ter-

<sup>1</sup> At a recent House Judiciary Committee hearing, FBI Director Mueller noted that the number of "pending" public corruption cases has increased by 49 percent since 2001. Oversight Hearing on the Federal Bureau of Investigation: Hearing Before the H. Comm. on the Judiciary, 110th Cong. (2007) (statement of Robert S. Muller, Director, Federal Bureau of Investigation). But increases in the number of "pending" cases—which likely means open investigations—is not evidence that the level of public corruption enforcement generally is satisfactory. If anything, the extraordinary increase in pending, rather than completed, cases cited by Director Mueller suggests that the only way to sustain an increase in actual prosecutions and convictions is to restore those resources for public corruption investigations and prosecutions that have been diverted since 9/11.

rorists.<sup>2</sup> This link between public corruption and national security must be addressed if Congress is serious about doing all it can to protect national security.

Corruption cases are also very difficult to prove, so Congress must speak with absolute clarity in those statutes that criminalize corrupt conduct by Government employees and officials. Those who agree to sell their office for personal gain through a bribery scheme, or to use their office to extort money from private citizens, know how to recognize and exploit ambiguities in the law that have been created by unexpected court decisions or by creative end-runs around the anti-corruption laws unforeseen by the policy makers who originally passed those laws. Just as Congress recently shored up its ethics rules to leave no doubt as to the obvious impropriety of taking excessive gifts from outside interests, it is crucial that Congress shore up the criminal law to close loopholes and resolve legal ambiguities that may allow corrupt actors to evade or defeat prosecution.

#### C. LEGAL PROVISIONS AND LEGISLATIVE INTENT

The Public Corruption Prosecution Improvements Act of 2007 responds directly and sensibly to these needs by giving prosecutors more time, resources, and legal tools to detect and prosecute public corruption. It creates no new criminal offenses, but instead tightens and clarifies existing laws to give public officials fair notice of the line between ethical breaches and criminal acts.

The Committee emphasizes that this bi-partisan legislation is directed at no particular political party or public official, as both parties have suffered through embarrassing breaches by some of their elected officials, and none of the bill's provisions may be applied retroactively to on-going prosecutions. Instead, this is a targeted bill directed at those in any branch of government who would use their public office to line their pockets at the expense of the American public.

The bill's seventeen provisions can be divided in three general categories as follows.

##### *1. More time and resources for public corruption investigations and prosecutions*

The bill extends the statute of limitations from five to six years for three of the most serious public corruption offenses: bribery, extortion by a public official, and public sector honest services fraud. As noted, public corruption cases are among the most difficult and time-consuming cases to investigate and prosecute. A September 2005 Department of Justice Inspector General's Report noted that "public corruption investigations often require difficult, time-consuming source development [and] take longer to develop than other public integrity cases \* \* \* due to the complex and sensitive nature of the investigations." See Office of the Inspector Gen., U.S. Dep't of Justice, at 94. Bank fraud, arson, and passport fraud,

<sup>2</sup>Unfortunately, these examples are not far-fetched. Earlier this year, an Iranian national pleaded guilty in federal court in Washington, D.C. to committing visa fraud at the U.S. Consulate in Dubai, United Arab Emirates. The fraud, which was perpetrated with the assistance of a consular employee, resulted in at least 25 Iranian males illegally entering the U.S. with seemingly legitimate U.S. visas. See Factual Basis for Plea, *United States v. Shajirat*, Crim. No. 1:04-cr-0015-RMU-2 (D.D.C. Jan. 16, 2007).

among other offenses, all have ten-year statutes of limitations. Public corruption offenses cut to the heart of our democracy, and a more modest increase to the statute of limitations is a reasonable step to help corruption investigators and prosecutors do their jobs.

Public corruption investigations are not only time-consuming, they are also expensive. In response to the shift of resources away from corruption and toward counterterrorism in recent years, the bill also provides \$25 million per year for fiscal years 2008–2011 for FBI and Department of Justice efforts to combat official corruption. This money will ensure that federal investigators and prosecutors have the resources they need to more effectively root out official corruption at all levels of government. This modest increase in funding would be less than the alleged loss to taxpayers in just one recent public corruption prosecution in the District of Columbia.<sup>3</sup>

## *2. Legislative fixes to strengthen and clarify existing statutes*

The bill also contains a series of legislative fixes to improve the clarity and enhance the effectiveness of existing federal statutes. These improvements will cost nothing to implement, but they will lead to greater deterrence and more effective prosecutions by clarifying the law and by closing existing loopholes that thwart congressional intent.

### *a. Venue in federal cases*

The first set of improvements relate to venue in federal cases—the district or districts where federal prosecutions may be brought. The bill broadens the part of the general venue statute—18 U.S.C. § 3237(a)—that governs venue in mail fraud cases, among other so-called “continuing” offenses that may be carried out in more than one district. The bill would permit venue to lie in any district in which an act in furtherance of the offense is committed. It is designed to address situations where the bulk of the criminal conduct takes place in one district, but the required mailing to facilitate that scheme happens to occur in another. For example, if a fraud scheme is hatched and carried out by a public official from his Washington, D.C. office, but the mailing in furtherance of that scheme happens to be dropped in a mailbox near the public official’s home in Bethesda, Maryland, venue should be able to lie in the District of Columbia, because the principle acts in furtherance of the scheme took place in the District. Under current law, the case could only be brought in Maryland. The intent of this provision is to expand venue to include districts where any part of the offense occurred as well as the district where the actual mailing took place.

The bill also includes a common-sense extension of venue in obstruction of justice and perjury prosecutions to include not only the district where the conduct constituting the offense took place, but also the district where the proceeding that the defendant intended to obstruct or affect took place. The Sarbanes-Oxley Act of 2002 already expanded venue in precisely this way for certain obstruction prosecutions, including 18 U.S.C. § 1512 (witness tampering). See Pub. L. 107–204, 116 Stat. 745. This bill simply applies this exten-

<sup>3</sup>The investigation is on-going, but the expected loss from the alleged D.C. Department of Tax and Revenue fraud scheme may be as high as \$44 million. See Leonnig & Keating, *supra*, at A1.

sion to the other obstruction-related statutes in the obstruction of justice chapter of the Federal Criminal Code. The same logic that led Congress to expand venue in the obstruction context applies with equal force to perjury prosecutions.

*b. Clarifications to bribery, gratuities, and mail/wire fraud statutes*

The second set of improvements relates to the federal bribery, gratuities, and general fraud statutes. See 18 U.S.C. §§ 201, 1341 and 1343.

The bill reverses the Supreme Court's holding in *United States v. Sun-Diamond Growers*, 526 U.S. 398 (1999), which severely restricted the application of the illegal gratuities statute. Contrary to the understandings of every circuit court to have considered the issue, the Supreme Court in *Sun-Diamond* imposed a new element to the federal gratuities statute, requiring the government to prove a "link" between the gratuity and an official act. This additional element makes the statute nearly impossible to differentiate from the federal bribery statute, which also requires a link between corrupt conduct and a specific act. In practice, the nexus requirement means that a spectrum of cases that fall short of a bribe but plainly involve corrupt conduct may not now be charged as gratuities absent a demonstrable link between the payment and specific official action.<sup>4</sup> Yet Congress plainly intended the gratuities statute to capture a far broader range of conduct than the bribery statute, because gratuities is a two-year offense while the statutory maximum penalty for bribery is fifteen years. In the wake of *Sun-Diamond*, the federal gratuities statute is rarely invoked. In light of the nexus requirement, prosecutors have an incentive to charge a bribe in every case that they can charge, as the burdens of proof for the two offenses are essentially the same.<sup>5</sup>

The bill would return the state of the law with regard to gratuities as it existed before 1999 by including within their statutory definition those benefits given to a public official "for or because of" that official's position. This will allow the statute to reach its intended range of corrupt conduct, including benefits flowing to public officials designed to curry favor for non-specified future acts or to build a reservoir of goodwill.

<sup>4</sup>As one legal commentator has observed: "If [the *Sun-Diamond* Court's requirement of a 'link' in gratuities cases] sounds like the crime of bribery, that is because it is. The Court has essentially eliminated the separate crime of unlawful gratuity and turned it into a lesser included offense of bribery." George D. Brown, *Putting Watergate Behind Us—Salinas, Sun-Diamond, and Two Views of the Anticorruption Model*, 74 Tulane L. Rev. 747, 774 (2000).

<sup>5</sup>The *Sun-Diamond* nexus requirement can lead to perverse results. For example, under current law, a private citizen may keep a public official on retainer by making substantial periodic payments to the official so long as there is an understanding that the money is not intended to influence any specific act, but is instead intended to build a reservoir of goodwill in the event that matters arise that would benefit the private interest. While these payments may run afoul of the gift rules, they are not actionable bribes or gratuities absent a provable "link." Such payments would be gratuities under this bill so long as they are made because of the person's public office, which is precisely what the law provided before *Sun-Diamond*. See *United States v. Bustamante*, 45 F.3d 933, 940 (5th Cir. 1995) ("[I]t is sufficient for the government to show that the defendant was given the gratuity simply because he held public office."); *United States v. Evans*, 572 F.2d 455, 480 (5th Cir. 1978) ("[I]t is not necessary that the official actually engage in identifiable conduct or misconduct nor that any specific quid pro quo be contemplated by the parties nor even that the official actually be capable of providing some official act as quid pro quo at the time [because] [t]he purpose of the [ ] [bribery and conflict of interest] statutes is to reach any situation in which the judgment of a government agent might be clouded because of payments or gifts made to him by reason of his position.").

To foreclose unrestrained prosecutorial discretion in this sensitive area in the law, however, the bill also provides an additional protection that was not included in the original gratuities statute, and that responds to concerns that contributed to the Sun-Diamond Court's decision to restrict the reach of the statute. Specifically, the bill creates a safe harbor for Government officials who accept things of value pursuant to applicable rule or regulation. This carve-out responds to the examples Justice Scalia set out in Sun-Diamond of de minimis gifts that, as the law stood in 1999, could have triggered the gratuities statute, by exempting from prosecution for gratuities all benefits accepted by public officials that are permitted by rules or regulations.<sup>6</sup> This new provision squarely addresses Justice Scalia's parade of horrors in Sun-Diamond by constraining prosecutorial discretion in cases where federal prosecution would clearly be inappropriate.<sup>7</sup> See, e.g., 5 CFR § 2635.204(a) (permitting government employees to accept gifts valued at \$20 or less, such as a baseball cap); 5 CFR § 2635.204(j) (permitting the President or Vice President to accept any gift not intended to influence official action, such as a replica sports jersey).

The bill also clarifies the definition of what it means for a public official to engage in an "official act," for purposes of the federal bribery and gratuities statutes. The need for clarification arose most recently in the D.C. Circuit's decision in *Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc). In that case, a fractured court sitting en banc held that, when a D.C. police detective used a police computer to search a law enforcement database for information on particular individuals in exchange for several secret cash payments, he could not be convicted of bribery or gratuities because no official act was involved.<sup>8</sup> The court held that his actions did not have the requisite degree of formality to fall within the definition of an "official act" for purposes of bribery or gratuities statutes. This cramped re-formulation of the "official acts" standard is at odds with the legislative history of the bribery statute. See Brief of Appellee at 16–25, *United States v. Valdes*, 475 F.3d 1319 (D.C. Cir. 2007) (No. 03–3066) (detailing legislative history of the federal bribery statute). As the dissenting judges ob-

<sup>6</sup>This safe harbor is intended to include only duly enacted federal regulations and duly enacted Rules of the House of Representatives and the United States Senate, see, e.g., Standing Rules of the Senate, S. Doc. No. 110–9 (2007), and is not intended to include other operating procedures and policies established by individual offices, departments, or agencies of the Government.

<sup>7</sup>The Committee's action does not bring campaign contributions within the reach of the federal gratuities statute. By the very terms of the statute, campaign contributions cannot be charged as gratuities because, unlike bribes, gratuities may only be charged if they are given "personally" to the public officials, while campaign contributions by definition are given to a separate entity. See 18 U.S.C. § 201(c)(1)(B). Campaign contributions can theoretically be charged as bribes, which need not be paid directly to the public official; but the bill in no way disturbs well-settled Supreme Court precedent that an explicit quid-pro-quo agreement is required in order for a campaign contribution to be charged as a bribe, even if the campaign contribution is itself unlawful. See *McCormick v. United States*, 500 U.S. 257, 272–74 (1991). Moreover, campaign contributions are explicitly permitted by government rules and regulations, see, e.g., Standing Rules of the Senate, Rule XXXV(1)(c)(2), and the gratuities statute as modified by this bill would not permit prosecution of anything allowed by rules and regulations, including campaign contributions. The Committee recognizes that campaign contributions are an essential component of our democracy, and this bill is in no way intended to restrict or criminalize this activity.

<sup>8</sup>One commentator recently observed that "[t]o permit public officials to use their positions of public trust to line their pockets with cash and escape prosecution under the anti-gratuities statute because the action fails to meet some vague degree of formality makes a mockery out of the law's attempt to punish corruption." Tara Malloy, *Corrupt Officials Shouldn't Escape Through a Loophole in the Gratuities Law*, Legal Times, Nov. 12, 2007, at 58.

served, this interpretation “effects a judicial contraction” of the “official acts” standard and will “undermine the prosecution of public corruption.” *Id.* at 1333, 1346 (Garland, J., dissenting).

To address this overly-narrow conception of official action, the bill explicitly adopts the tried-and-true language from the Supreme Court’s decision in *United States v. Birdsall*, 233 U.S. 223 (1914), defining “official act,” and thereby makes clear that “[e]very action that is within the range of official duty comes within the purview of the bribery statute.” *Id.* at 30. The D.C. Circuit’s hyper-technical reading of the “official acts” standard unnecessarily disrupts uniformity in the law, and undermines fair notice to public officials that they may not legally accept secret benefits from private interests in return for any action within the range of their official duties.

The bill also closes a potential loophole by clarifying bribery law in cases where there is an on-going stream of financial benefits flowing from a private source to a public official. In such cases, it may be impossible to establish a one-to-one link between a specific payment and a specific official act. No circuit presently requires such a one-to-one showing, but to avoid confusion and unnecessary litigation,<sup>9</sup> the bill clarifies that a corrupt payment can be made to influence more than one official act, and, to the same end, that a series of such payments may be made to influence a public official in performing a series of official acts.<sup>10</sup> See *United States v. Gamin*, No. 03–1448–cr, slip op. (2d Cir. Dec. 4, 2007) (holding that, in the bribery context, the government does not have to tie payments to specific acts but instead can prove that “the favors and gifts flowing to a public official are in exchange for a pattern of official actions favorable to the donor.”); *United States v. Quinn*, 359 F.3d 666, 673 (4th Cir. 2004) (“The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official in exchange for a pattern of official actions favorable to the donor.”). This clarification is intended to codify this basic understanding of “course of conduct” bribery. Congress should leave no doubt that a bribery charge cannot be defeated merely because the government cannot match up each specific payment in a series with specific official acts.<sup>11</sup> *Id.*

Finally, the bill broadens coverage of the mail and wire fraud statutes, which may be used in tandem with other statutes to prosecute public corruption. The term “money or property” has been interpreted by courts to broadly include a variety of benefits, including intangible rights; but the Supreme Court in *United States v. Cleveland*, 531 U.S. 12 (2000), held that state licenses to operate

<sup>9</sup> One recent example of such litigation arose in the 2003 prosecution and conviction of former Bridgeport, Connecticut mayor Joseph P. Ganim. During his recent appeal, Mr. Ganim argued that this bribery conviction should be overturned because the Government was required to link each alleged benefit to a specific act that he performed. The Second Circuit rejected this argument, and held that, “bribery can be accomplished through an ongoing course of conduct, so long as evidence shows that the favors and gifts flowing to a public official are in exchange for a pattern of official actions favorable to the donor.” *United States v. Gamin*, No. 03–1448–cr, slip op. at 24–26 (2d Cir. Dec. 4, 2007).

<sup>10</sup> The bill makes this same clarification to the statute governing federal prosecution of state and local bribery, 18 U.S.C. § 666, and it lowers the transactional threshold for section 666 bribery prosecutions from \$5,000 to \$1,000.

<sup>11</sup> There are other statutes in the Federal Criminal Code that use the terms “thing of value” and “official act.” The Committee’s decision to clarify how those terms are used in 18 U.S.C. §§ 201 and 666 should not be viewed as an implicit congressional judgment about the use of these terms elsewhere in the Code.



video poker machines were not “property” within the meaning of the mail fraud statute. The bill would reverse the Supreme Court’s holding in *Cleveland*. As many circuit courts held before *Cleveland* was decided, licenses, permits and other intangible rights have value to the issuing authority, and, assuming a mailing or a wire, fraudulent deprivation of these rights should be chargeable as federal crimes.<sup>12</sup>

### 3. *Technical fixes and increased statutory maximum sentences*

The bill also contains a series of long-needed technical fixes to select statutes, as well as targeted increases in statutory maximum penalties for statutes used in public corruption cases. For example, the bill amends the federal theft statute—18 U.S.C. § 641—to bring within its purview the District of Columbia government and its agencies. This change is long overdue in view of the District’s unique status, and it comports with the overarching statutory scheme because the District is already included in the federal bribery statute (18 U.S.C. § 201) and the statute governing theft and bribery from programs receiving federal funds (18 U.S.C. § 666). The need for this fix is acute: under current law, massive thefts of District of Columbia funds—such as the recent D.C. Tax and Revenue allegations of a \$44 million fraud—cannot be prosecuted on a federal theft theory.

Similarly, the bill adds the crimes of federal theft, and theft and bribery from programs receiving federal funds, as predicates for federal wire taps and as predicates under the Racketeer Influenced and Corrupt Organizations (RICO) Act. These are serious offenses, on par with other offenses that already serve as wiretap and RICO predicates.

The bill also increases the maximum penalties for certain public corruption related offenses.<sup>13</sup> These increases reflect the Committee’s view of the serious and corrosive nature of these crimes, and they harmonize the punishment for these public corruption-related offenses with similar statutes. Increasing penalties in appropriate cases sends a message to would-be criminals and to the public that there will be severe consequences for breaching the public trust. The Committee notes, however, that, aside from any changes resulting from the limited review called for in Section 17 of the bill, it does not intend for the increases in statutory maximum sentences to trigger recommendations by the Sentencing Commission to increase the base offense levels for these crimes. Rather, the statutory increases in the bill are intended to give additional sentencing latitude for egregious cases.

This bi-partisan bill is supported by the Department of Justice and by a wide array of public interest groups that have long advocated for vigorous enforcement of our fraud and public corruption

<sup>12</sup> As one circuit court noted before *Cleveland*, “the government’s interest here is not simply that of a regulator, but rather that of a dispenser of valuable property in which the licensee has constitutionally protected property interests and which the government may enjoin upon misuse. We do not believe that Congress, in enacting the mail fraud statute, intended its reach to be dependent on artificial constructs and fleeting distinctions.” *United States v. Martinez*, 905 F.2d 709 (3d Cir. 1990), overruled by *Cleveland v. United States*, 531 U.S. 12 (2000).

<sup>13</sup> One section for which the bill increases the maximum sentence is 18 U.S.C. § 600, which targets promises of employment for political activity. The Committee notes that this statute does not reach the routine practice of offering jobs as appropriate to those who assisted campaigns; rather it reaches only situations in which there was an explicit quid pro quo agreement in advance to give employment in exchange for political activity.

laws, including the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen, and U.S. PIRG.

## II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

### A. INTRODUCTION OF THE BILL

Chairman Leahy introduced S. 1946, the Public Corruption Prosecution Improvements Act of 2007, on August 3, 2007, joined by Senator Cornyn as an original cosponsor. Since the bill's introduction, Senator Sessions has joined on as a cosponsor. The bill was referred to the Committee on the Judiciary.

### B. COMMITTEE CONSIDERATION

The bill was considered by the Committee on the Judiciary on November 1, 2007. Chairman Leahy offered a complete substitute amendment which was accepted by unanimous consent.

Senator Specter offered two amendments. The first amendment would have explicitly stated that campaign contributions may not be charged as gratuities. This amendment was rejected on a rollcall vote. The vote record is as follows:

Tally: 6 Yeas, 12 Nays, 1 Pass.

Yeas (6)	Nays (12)	Pass (1)
Cardin (D-MD)	Biden (D-DE)	Coburn (R-OK)
Hatch (R-UT)	Brownback (R-KS)	
Kyl (R-AZ)	Cornyn (R-TX)	
Graham (R-SC)	Durbin (D-IL)	
Specter (R-PA)	Feingold (D-WI)	
Whitehouse (D-RI)	Feinstein (D-CA)	
	Kennedy (D-MA)	
	Kohl (D-WI)	
	Grassley (R-IA)	
	Leahy (D-VT)	
	Schumer (D-NY)	
	Sessions (R-AL)	

Senator Specter offered an amendment to impose a “knowingly and corruptly” scienter requirement on the federal gratuities statute. The amendment was rejected on a rollcall vote. The vote record is as follows:

Tally: 2 Yeas, 14 Nays, 3 Passes.

Yeas (2)	Nays (14)	Pass (3)
Specter (R-PA)	Biden (D-DE)	Coburn (R-OK)
Hatch (R-UT)	Brownback (R-KS)	Graham (R-SC)
	Cardin (D-MD)	Kyl (R-AZ)
	Cornyn (R-TX)	
	Durbin (D-IL)	
	Feingold (D-WI)	
	Feinstein (D-CA)	
	Kennedy (D-MA)	
	Kohl (D-WI)	
	Grassley (R-IA)	

Yeas (2)

Nays (14)

Pass (3)

Leahy (D-VT)  
 Schumer (D-NY)  
 Sessions (R-AL)  
 Whitehouse (D-RI)

The Committee then voted to report favorably to the Senate the Public Corruption Prosecution Improvements Act of 2007. The Committee proceeded by voice vote.

### III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short Title. This section cites the short title of the bill as the “Public Corruption Prosecution Improvements Act of 2007.”

Section 2. Extension of Statute of Limitations for Serious Public Corruption Offenses. This section extends the statute of limitations from five to six years for bribery, deprivation of honest services involving a public official, and extortion by a public official.

Section 3. Application of Mail and Wire Fraud Statutes to Licenses and Other Intangible Rights. This section expands coverage of the mail and wire fraud statutes to include schemes involving intangible interests such as contract rights, licenses, permits, trade secrets, franchises, and government grants

Section 4. Venue for Federal Offenses. This section amends section 3237 of title 18, which governs venue for offenses begun in one district and completed in another district, to clarify that venue exists in any district in which any portion of the offense is committed, any act in furtherance of the offense is committed, or in which the offense is completed.

Section 5. Theft or Bribery Concerning Programs Receiving Federal Financial Assistance. This section modifies section 666 of title 18 concerning theft or bribery from an organization, government or agency that receives federal financial assistance by reducing the \$5,000 requirement to \$1,000 for section 666 bribery offenses, increasing the maximum penalty for all offenses under this section from 10 years to 15 years, and clarifying that a “thing” of value can refer to a single item or more than one item.

Section 6. Penalty for Section 641 Violations. This section increases the maximum term of imprisonment for theft and embezzlement of federal funds from 10 years to 15 years.

Section 7. Penalty for Section 201(b) Violations. This section increases the maximum term of imprisonment for bribery violations from 15 years to 20 years.

Section 8. Increase of Maximum Penalties for Certain Public Corruption Related Offenses. This section increases the maximum punishment to 10 years imprisonment for the following crimes: solicitation of political contributions (section 602); promise of employment for political activity (section 600); deprivation of employment for political activity (section 601); intimidation to secure political contributions (section 606); solicitation and acceptance of contributions in federal offices (section 607); and coercion of political activity by federal employees (section 610).

Section 9. Addition of District of Columbia to Theft of Public Money Offense. This section amends section 641 of title 18 relating

to theft from the government to include the District of Columbia government and agencies.

Section 10. Additional RICO Predicates. This section adds section 641 (embezzlement or theft of public money, property, or records) and section 666 (relating to theft or bribery concerning programs receiving federal funds), of title 18 as RICO predicates.

Section 11. Additional Wiretap Predicates. The section amends 2516(1) of title 18 to add sections 641 (embezzlement or theft of public money, property or records) and section 666 (relating to theft or bribery concerning programs receiving federal funds) as predicate offenses for criminal wiretaps.

Section 12. Clarification of Crime of Illegal Gratuities. This section amends sections 201(c)(1)(A) & (B) of title 18 to clarify that things of value, given to a public official “for or because of” that official’s position and not otherwise permitted by law or regulation, are illegal under the federal gratuities statute.

Section 13. Clarification of Definition of “Official Act.” This section changes the definition of “official act” in section 201(a)(3) of title 18 to include any conduct that falls within the range of official duty of the public official. This section also clarifies that an official act can be a single act, more than one act, or a course of conduct.

Section 14. Clarification of Course of Conduct Bribery. This section, in concert with section 13, amends the federal bribery statute to make clear that a corrupt payment can be made to influence more than one official act, and, to the same end, that a series of such payments may be made to influence a government official in performing a series of official acts.

Section 15. Expanding Venue for Perjury and Obstruction of Justice Proceedings. This section amends the perjury and obstruction of justice statutes to expand venue in those prosecutions not only to the district where the false statement or obstructive conduct occurs, but also to the district in which an affected proceeding takes place.

Section 16. Authorization for Additional Personnel to Investigate and Prosecute Public Corruption Offenses. This section provides additional funds (\$25,000,000 for fiscal years 2008–11) to Offices of Inspectors General and the Justice Department for the investigation and prosecution of public corruption offenses. The FBI and the U.S. Attorney’s Offices in recent years have had to divert resources away from criminal law priorities including fraud and corruption, and into counterterrorism.

Section 17. Amendment of the Sentencing Guidelines Relating to Certain Crimes. This section directs the U.S. Sentencing Commission to consider amending the U.S. Sentencing Guidelines in light of the other provisions of this bill.

#### IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

NOVEMBER 9, 2007.

Hon. PATRICK J. LEAHY,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1946, the Public Corruption Prosecution Improvements Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*S. 1946—Public Corruption Prosecution Improvements Act*

Summary: S. 1946 would broaden the coverage of the current laws against public corruption and would increase penalties for such offenses. The legislation would expand the number of offenses relative to fraud committed by public officials that could be federally prosecuted. The bill would authorize the appropriation of \$25 million for each of fiscal years 2008 through 2011 mostly for the Department of Justice to investigate and prosecute violators of the bill's provisions.

Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$100 million over the 2008–2012 period. S. 1946 could affect direct spending and receipts, but we estimate that any such effects would not be significant.

S. 1946 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1946 is shown in the following table. For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2007. CBO assumes that the amounts authorized by the bill will be appropriated near the start of each fiscal year and that outlays will follow the historical rate of spending for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level .....	25	25	25	25	0
Estimated Outlays .....	15	25	25	25	10

In addition to the costs shown in the table, enacting S. 1946 could increase collections of criminal fines for violations of the bill's provisions. CBO estimates that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation.

*Intergovernmental and private-sector mandates*

S. 1946 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Grabowicz. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 1946.

## VI. CONCLUSION

The Public Corruption Prosecution Improvements Act of 2007 will provide federal law enforcement critical additional time and resources to help detect and prosecute corrupt conduct at all levels of Government. It also amends several federal statutes in sensible, targeted ways to restore the intent of Congress, and to provide fair notice to public officials of what the laws provide.

The Committee urges the prompt passage of this important legislation.

## VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1946, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

\* \* \* \* \*

## CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

\* \* \* \* \*

## § 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

(1) the term “public official” means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term “person who has been selected to be a public official” means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term “official act” means any [decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit.] *action within the range of official duty, and any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be brought before any public official, in such public official’s official capacity or in such official’s place of*

*trust or profit. An official act can be a single act, more than one act, or a course of conduct.*

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises **【anything of value】** *any thing or things of value* to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give **【anything of value】** *any thing or things of value* to any other person or entity, with intent—

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept **【anything of value】** *any thing or things of value* personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give **【anything of value】** *any thing or things of value* to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absents himself therefrom; shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than **【fifteen years】** *20 years*, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever—

(1) **【otherwise than as provided by law for the proper discharge of official duty—】** *otherwise than as provided by law for the proper discharge of official duty, or by rule or regulation—*

(A) directly or indirectly gives, offers, or promises [anything of value] *any thing or things of value* to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official *for or because of the official's or person's official position, or for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official*; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept [anything of value] *any thing or things of value* personally [for or because of any official act performed or to be performed by such official or person;] *for or because of the official's or person's official position, or for or because of any official act performed or to be performed by such official or person*;

(2) directly or indirectly, gives, offers, or promises [anything of value] *any thing or things of value* to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept [anything of value] *any thing or things of value* personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

\* \* \* \* \*

## CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

\* \* \* \* \*

### § 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political



office, shall be fined under this title or imprisoned not more than **[one year]** *10 years*, or both.

\* \* \* \* \*

#### **§ 601. Deprivation of employment or other benefit for political contribution**

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined under this title, or imprisoned not more than **[one year]** *10 years*, or both.

\* \* \* \* \*

#### **§ 602. Solicitation of political contributions**

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than **[3 years]** *10 years*, or both.

\* \* \* \* \*

#### **§ 606. Intimidation to secure political contributions**

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under this title or imprisoned not more than **[three years]** *10 years*, or both.

\* \* \* \* \*

#### **§ 607. Place of solicitation**

(a) PROHIBITION.—

(1) IN GENERAL.—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

(2) PENALTY.—A person who violates this section shall be fined not more than \$5,000, imprisoned not more than **3 years** *10 years*, or both.

\* \* \* \* \*

#### **§ 610. Coercion of political activity**

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than **three years** *10 years*, or both.

\* \* \* \* \*

### **CHAPTER 31—EMBEZZLEMENT AND THEFT**

\* \* \* \* \*

#### **§ 666. Theft or bribery concerning programs receiving Federal funds**

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that—

(i) is valued at \$5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, **anything of value** *any thing or things of value* from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of **\$5,000** *\$1,000* or more; or

(2) corruptly gives, offers, or agrees to give [anything of value] *any thing or things of value* to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of [\\$5,000] *\\$1,000* or more; shall be fined under this title, imprisoned not more than [10 years] *15 years*, or both.

\* \* \* \* \*

#### **§ 641. Public money, property or records**

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of *the District of Columbia* or the United States or of any department or agency thereof, or any property made or being made under contract for *the District of Columbia* or the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than [ten years] *15 years*, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word “value” means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

\* \* \* \* \*

### **CHAPTER 63—MAIL FRAUD**

\* \* \* \* \*

#### **§ 1341. Frauds and swindles**

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining [money or property] *money, property, or any other thing of value* by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or impris-

oned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

\* \* \* \* \*

#### § 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining ~~money or property~~ *money, property, or any other thing of value* by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

\* \* \* \* \*

### CHAPTER 79—PERJURY

\* \* \* \* \*

#### § 1512. Tampering with a witness, victim, or an informant

(a)(1) \* \* \*

\* \* \* \* \*

(i) ~~【A prosecution under this section】~~ *A prosecution under this chapter or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.*

\* \* \* \* \*

#### § 1624. Venue

*A prosecution under this chapter may be brought in the district in which the oath, declaration, certificate, verification, or statement under penalty of perjury is made or in which a proceeding takes place in connection with the oath, declaration, certificate, verification, or statement.*

\* \* \* \* \*

### CHAPTER 95—RACKETEERING

\* \* \* \* \*

#### § 1956. Laundering of monetary instruments

(a) \* \* \*

\* \* \* \* \*

(c) As used in this section—

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(6) \* \* \*

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978);

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of

goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), [section 641 (relating to public money, property, or records),] section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), [section 666 (relating to theft or bribery concerning programs receiving Federal funds),] section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of

1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 [7 U.S.C.A. § 2024] (relating to food stamp fraud) involving a quantity of coupons having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

\* \* \* \* \*

## CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

\* \* \* \* \*

### § 1961. Definitions

As used in this chapter—

(1) “racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), *section 641 (relating to embezzlement or theft of public money, property, or records)*, section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), *section 666 (relating to theft or bribery concerning programs receiving Federal funds)*, sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturaliza-

tion or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phone records, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating



to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

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## **CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS**

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### **§ 2516. Authorization for interception of wire, oral, or electronic communications**

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons) chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), *section 641 (relating to embezzlement or theft of public money, property, or records),*

*section 666 (relating to theft or bribery concerning programs receiving Federal funds), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping,*

and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 956 (conspiracy to harm persons or property overseas), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents);

(d) any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);

(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline), section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(l) the location of any fugitive from justice from an offense described in this section;

(m) a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

(n) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

(o) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);

(p) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relat-

ing to fraud and misuse of visas, permits, and other documents, section 1028A (relating to aggravated identity theft)) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

(q) any criminal violation of section 229 (relating to chemical weapons): or sections 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h, 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); or

(s) any conspiracy to commit any offense described in any subparagraph of this paragraph.

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## CHAPTER 211—JURISDICTION AND VENUE

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### § 3237. [Offenses begun in one district and completed in another] *Offense taking place in more than one district*

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves *or in any district in which an act in furtherance of the offense is committed.*

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## CHAPTER 213—LIMITATIONS

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### § 3299A. *Corruption offenses*

*Unless an indictment is returned or the information is returned or the information is filed against a person within 6 years after the commission of the offense, a person may not be prosecuted, tried, or punished for a violation of, or a conspiracy or an attempt to violate the offense in—*

(1) *section 201 or 666;*

(2) *section 1341 or 1343, when charged in conjunction with section 1346 and where the offense involves a scheme or artifice to deprive another of the intangible right of honest services of a public official;*

(3) section 1951, if the offense involves extortion under color of official right;

(4) section 1952, to the extent that the unlawful activity involves bribery; or

(5) section 1962, to the extent that the racketeering activity involves bribery chargeable under State law, involves a violation of section 201 or 666, section 1341 or 1343, when charged in conjunction with section 1346 and where the offense involves a scheme artifice to deprive another of the intangible right of honest services of a public official, or section 1951, if the offense involves extortion under color of official right.

